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Supreme Court of Wisconsin

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You are hereby notified that the Court has entered the following order:

No. 2021AP1434-OA Stempski v. Heinrich

A petition for leave to commence an original action under Wis. Stat. § (Rule) 809.70, an emergency motion for temporary injunctive relief, an appendix, and a supporting legal memorandum having been filed on behalf of petitioner, Bryant Stempski; a response to the petition and the motion having been filed on behalf of respondents, Janel Heinrich, Dane County, City of Madison, and Public Health of Madison & Dane County; and a reply memorandum in support of the petition and motion having been filed by the petitioner; and the court having considered all of the filings;

IT IS ORDERED that the petition for leave to commence an original action is denied; and

IT IS FURTHER ORDERED that the motion for temporary injunctive relief is dismissed because the court is not exercising its original jurisdiction.

ANNETTE KINGSLAND ZIEGLER, C.J. *(dissenting).* I dissent because, once again, this court abdicates its responsibility to "say what the law is."[1] Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803). Instead, it presumably expects a trial court and court of appeals to do our job. Because there are no factual disputes at issue, this original action involves only a declaration of the law. The petition before the court addresses pervasive, fundamental, statutory, and constitutional concerns that should be resolved by our court. I would not dodge that responsibility.[2]

Respondents argue that local health authorities, who are unelected and largely shielded from democratic accountability, have authority under Wis. Stat. § 252.03 to regulate across wide swaths of society the personal decisions of those engaging in public life. It is undisputed that health authorities in Dane County have mandated that all individuals age two and older don facial coverings whenever they enter an enclosed public space. In support of this order, respondents cite general statutory language providing local health officials with apparent authority to do what is "necessary to prevent, suppress and control communicable diseases" and what "is reasonable and necessary for the prevention and suppression of disease." § 252.03(1)-(2). Yet only two months ago we determined that local health officials did not have the authority to close schools because that authority was not specifically included in section 252.03. James v. Heinrich, 2021 WI 58, ¶¶18, 49, 397 Wis. 2d 516, 960 N.W.2d 350. We stated "[b]ecause the legislature expressly granted local health officers discrete powers under Wis. Stat. § 252.03 but omitted the power to close schools, local health officers do not possess that power." Id., ¶18. In other words, "the

[1] This court, in a series of recent decisions, has shown an unwillingness to fulfil its responsibilities and resolve significant legal issues of statewide importance. See Justice Rebecca Grassl Bradley's dissent, infra, n.4 (collecting cases from the past two years); Trump v. Biden, 2020 WI 91, ¶¶107-39, 394 Wis. 2d 629, 951 N.W.2d 568 (Ziegler, J., dissenting); Hawkins v. Wis. Elections Comm'n, 2020 WI 75, ¶¶29-83, 393 Wis. 2d 629, 948 N.W.2d 877 (Ziegler, J., dissenting); Gymfinity, Ltd. v. Dane Cnty., No. 2020AP1927-OA, unpublished order (Wis. S. Ct. Dec. 21, 2020); Trump v. Evers, No. 2020AP1971-OA, unpublished order (Wis. S. Ct. Dec. 3, 2020); Wis. Voters All. v. Wis. Elections Comm'n, No. 2020AP1930-OA, unpublished order (Wis. S. Ct. Dec. 4, 2020); Mueller v. Jacobs, No. 2020AP1958-OA, unpublished order (Wis. S. Ct. Dec. 3, 2020); Zignego v. Wis. Elections Comm'n, No. 2019AP2397, unpublished order (Wis. S. Ct. Jan. 13, 2020).

[2] Justice Roggensack spends time discussing what pitfalls may occur before the circuit court. She focuses in part on why the trial court may not be best suited as a practical matter to address the issues in this case. However, our focus should not lie in potential problems associated with conflicts of interest. Instead, the focus here should be on our court fulfilling its duty to declare what the law is rather than placing that responsibility on the courts below. The issues presented in the instant petition ought not be relegated to the trial court or an intermediate court of appeals. With this abdication of duty comes all the associated delay and potential mootness issues. Justice Roggensack may be raising a variety of valid points in her writing, but potential limitations of the trial court are not the primary reason why this court should take jurisdiction over this dispute.

legislature did not specifically confer [that] power." State ex. rel. Harris v. Larson, 64 Wis. 2d 521, 527, 219 N.W.2d 335 (1974); see also Antonin Scalia & Bryan A Garner, Reading Law: The Interpretation of Legal Texts 107-11 (2012) ("Negative-Implication Canon. The expression of one thing implies the exclusion of others (expressio unius est exclusio alterius)."). Notably, a reference to "facial coverings" or "masks" cannot be found in section 252.03.

The parties do not dispute that local health officials in Dane County have issued a mask mandate. The sole question that remains is whether those officials have the authority to issue the mandate. The issue presented is of statewide significance.

In Wisconsin, we are the court of last resort. We have been "designated by the constitution and the legislature as a law-declaring court." Cook v. Cook, 208 Wis. 2d 166, 189, 560 N.W.2d 246 (1997). But today we leave it to a circuit court, and then the court of appeals, to declare what the law is. By the time we have the opportunity to fulfil our constitutional role, mandates and orders may come and go, and the public may be left in substantial uncertainty. This case, in fact, could become moot by the time it may wind its way through the system to be next in front of our court. All the while, personal liberties are implicated, without clear guidance from this state's highest court. Old adages remain true today: justice delayed is justice denied.

For the foregoing reasons, I respectfully dissent.

I am authorized to state that Justice REBECCA GRASSL BRADLEY joins this dissent.

PATIENCE DRAKE ROGGENSACK, J. *(dissenting).* On Tuesday, August 17, 2021 at 10:28 a. m., Janel Heinrich, acting as the health officer for Madison and Dane County, issued a very broad masking order that became effective Thursday, August 19, 2021 at 12:01 a.m. Her order was issued without notice or an opportunity to be heard.

The order covers "any enclosed space open to the public where other people are . . . present." The order applies to all of Dane County. It sets requirements for children as young as two years of age and for adults of all ages.

We are asked to grant review in an original action based on Heinrich's administrative order.[3] When we review an administrative order issued pursuant to Wis. Stat. § 252.03, our standard of review requires us to interpret the statute. State ex rel. Kalal v. Dane Cnty. Circuit Court, 2004 WI 76, ¶45, 236 Wis. 2d 211, 612 N.W.2d 659. In so doing, we will determine

[3] Reviews of administrative board decisions are subject to certiorari review where we consider: "(1) whether the board kept within its jurisdiction; (2) whether it proceeded on a correct theory of law; (3) whether its action was arbitrary, oppressive, or unreasonable and represented its will and not its judgment; and (4) whether the board might reasonably make the order or determination in question based on the evidence." State ex rel. Ziervogel v. Wash. Cnty. Bd. of Adjustment, 2004 WI 23, ¶12, 269 Wis. 2d 549, 676 N.W. 401.

whether Heinrich's order is arbitrary or capricious or falls outside of her statutory jurisdiction. Wis. Pro. Police Ass'n v. Pub. Serv. Comm'n of Wis., 205 Wis. 2d 60, 555 N.W.2d 179 (Ct. App. 1996). "Arbitrary or capricious conduct lacks a rational basis and is the result of an unconsidered, willful or irrational choice rather than a 'sifting and winnowing' process." Id. at 74. Heinrich's order asserts jurisdiction over all of Dane County.

Heinrich asserts that her authority to issue such a broad order arises from Wis. Stat. § 252.03(1), (2) and (4), which provide:

> (1) Every local health officer, upon the appearance of any communicable disease in his or her territory, shall immediately investigate all the circumstances and make a full report to the appropriate governing body and also to the department. The local health officer shall promptly take all measures necessary to prevent, suppress and control communicable diseases, and shall report to the appropriate governing body the progress of the communicable diseases and the measures used against them, as needed to keep the appropriate governing body fully informed, or at such intervals as the secretary may direct. The local health officer may inspect schools and other public buildings within his or her jurisdiction as needed to determine whether the buildings are kept in a sanitary condition.
>
> (2) Local health officers may do what is reasonable and necessary for the prevention and suppression of disease; may forbid public gatherings when deemed necessary to control outbreaks or epidemics and shall advise the department of measures taken.
>
> (3) . . . .
>
> (4) No person may interfere with the investigation under this chapter of any place or its occupants by local health officers or their assistants.

Whether the breadth of the order's coverage of locations regulated is within Heinrich's jurisdiction and whether the breadth of the persons affected is grounded in necessity are significant legal questions. For example, does Heinrich's order affect the Dane County Circuit Courts because they are "enclosed space[s] open to the public"?

Heinrich's response does not focus on this question, but rather, it asserts there is no need for this court to exercise original jurisdiction because the matter could be proceeded on in Dane County Circuit Court. However, the Dane County Circuit Court has its own June 1, 2021 order in place relative to COVID-19.

The Dane County Circuit Court order was created and approved through procedures we established by Supreme Court orders. The Dane County Circuit Court order does not require masks for court participants or members of the public who attend court proceedings. What is the effect of Heinrich's order on that June 1, 2021 order and on the Wisconsin Supreme Court order upon which the circuit court order is based?

If this petition were refiled in Dane County Circuit Court, would Dane County Circuit Court have a conflict of interest in determining whether its order or Heinrich's order decides the question of masking in court? We should grant review to address that concern.

It is our order relative to COVID-19 concerns in the circuit courts that caused the June 1, 2021 court order to be issued by the Dane County Circuit Court. We have worked hard to have a uniform, state-wide approach to the challenges of COVID-19 in Wisconsin courts. We need to grant review to assure a uniform approach continues.

Furthermore, it is our obligation to say what the law is. Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803) (explaining that it is "the province and duty of the judicial department to say what the law is.").

In addition, what is the necessity for masking two-year-old children? Was that an arbitrary choice? There is no factual narration in the order upon which Heinrich could have relied. It has been said that "[i]f the administrative action is to be tested by the basis upon which it purports to rest, that basis must be set forth with such clarity as to be understandable." Sec. & Exch. Comm'n v. Chenery Corp., 332 U.S. 194, 196 (1947). Does that lacking defeat the order? That is a legal question. It is also apt to be a recurring question because COVID-19 will be with us for an indeterminate time.

And finally, the order does not mention James v. Heinrich, 2021 WI 58, 397 Wis. 2d 516, 960 N.W.2d 350, issued in adjudication of Heinrich's school closure order, wherein we held that "[w]hat is reasonable and necessary cannot be reasonably read to encompass anything and everything." Id., ¶22.

As the United States Supreme Court has said, courts require clarity to understand why an agency makes decisions. Without such clarity, it can be said that an agency's order is arbitrary or capricious and therefore, represents its will and not its judgment. See Hartland Sportsmen's Club, Inc. v. City of Delafield, 2020 WI App 44, ¶¶3, 4, 393 Wis. 2d 496, 947 N.W.2d 214 (explaining that the City's decision to deny a Conditional Use Permit (CUP) was arbitrary and capricious, without explanation, and reflected the will of the City, not its judgment).

The pending petition for an original action should have been granted for many reasons, some of which are set forth in Chief Justice Ziegler's and Justice Rebecca Bradley's dissents. Certainly, it should have been granted to address the breadth of Heinrich's order, which was issued by a Dane County official without notice or an opportunity to be heard. The people of Wisconsin are entitled to the clarity that our review will provide. Because a majority of this court refuses to fulfill the court's obligations to the people of Wisconsin, I respectfully dissent from the denial of the petition to commence an original action.

REBECCA GRASSL BRADLEY, J. *(dissenting).* Without offering any explanation to the people of Wisconsin who elected them, a majority of this court shirks its institutional

responsibility to decide yet another case alleging an unlawful deprivation of liberty. In controversial cases, the same majority continues to dodge decisions that undoubtedly would displease half of a politically divided state.[4] But our oath of office requires us to have the courage to uphold the constitution and apply the law, disregarding the enmity that judicial decisions grounded in the law sometimes provoke.

A majority of this court seems to have forgotten a fundamental first principle of government: all government officials work for We the People and must remain answerable to the citizens if our constitutional republic is to survive. The very first provision of the Wisconsin Constitution declares the rights of the people, which every justice of the Supreme Court swears to uphold:

> All people are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness; to secure these rights, governments are instituted, deriving their just powers from the consent of the governed.

Wis. Const. art. I, § 1. "An inherent right to liberty means all people are born with it; the government does not bestow it upon us and it may not infringe it." Porter v. State, 2018 WI 79, ¶52, 382 Wis. 2d 697, 913 N.W.2d 842 (Rebecca Grassl Bradley & Kelly, JJ., dissenting). A majority of this court tends to treat this language as merely exhortatory, more frequently disregarding it altogether. Reflecting the primacy of its placement at the beginning of the constitution, this provision establishes the framework underlying any proper interpretation of the articles that follow. Under the Wisconsin Constitution, "all governmental power derives 'from the consent of the governed' and government officials may act only within the confines of the authority the people give them." Wisconsin Legislature v. Palm, 2020 WI 42, ¶66, 391 Wis. 2d 497, 942 N.W.2d 900 (Rebecca Grassl Bradley, J., concurring) (quoting Wis. Const. art. I, § 1). The Founders designed our "republic to be a government of laws, and not of men . . . bound by fixed laws, which the people have a voice in making, and a right to defend." John Adams, Novanglus: A History of the Dispute with America, from Its Origin, in 1754, to the Present Time, in Revolutionary Writings of John Adams (C. Bradley Thompson ed. 2000). Allowing any person

[4] Trump v. Biden, 2020 WI 91, 394 Wis. 2d 629, 951 N.W.2d 568 (declining to address the merits of multiple claims under the doctrine of laches); Hawkins v. Wis. Elecs. Comm'n, 2020 WI 75, 393 Wis. 2d 629, 948 N.W.2d 877 (per curiam) (denying the petition for leave to commence an original action); Gymfinity, Ltd. v. Dane Cnty., No. 2020AP1927-OA, unpublished order (Wis. Sup. Ct. Dec. 21, 2020) (denying the petition for leave to commence an original action); Trump v. Evers, No. 2020AP1971-OA, unpublished order (Wis. Sup. Ct. Dec. 3, 2020) (denying the petition for leave to commence an original action); Wis. Voters Alliance v. Wis. Elecs. Comm'n, No. 2020AP1930-OA, unpublished order (Wis. Sup. Ct. Dec. 4, 2020) (denying the petition for leave to commence an original action); Mueller v. Jacobs, No. 2020AP1958-OA, unpublished order (Wis. Sup. Ct. Dec. 3, 2020) (denying the petition for leave to commence an original action); see also Zignego v. Wis. Elecs. Comm'n, No. 2019AP2397, unpublished order (Wis. Sup. Ct. Jan. 13, 2020) (denying the petition to bypass).

to be "bound by no law or limitation but his own will" defies the will of the people. Id. Giving full force to the constitutional command that government was instituted to secure the people's inherent rights, this court long ago declared that "sec. 3, art. VII, of the constitution,[5] contemplates that the supreme court exercise its judgment and discretion in taking jurisdiction of cases so importantly affecting the rights and liberties of the people of this state as to warrant such intervention." Petition of Heil, 230 Wis. 428, 445, 284 N.W. 42 (1939).

Petitioner presents two discrete issues of law, neither of which implicates any factual dispute whatsoever. The first issue challenges the statutory authority of local health officers to impose mask mandates under Wis. Stat. § 252.03, a statute this court construed merely two months ago. In James v. Heinrich—a recent case challenging the exercise of power over the people by the same Dane County health officer—this court held that "if 'the legislature did not specifically confer a power,' the exercise of that power is not authorized." 2021 WI 58, ¶18, 397 Wis. 2d 516, 960 N.W.2d 350 (quoting State ex rel. Harris v. Larson, 64 Wis. 2d 521, 527, 219 N.W.2d 335 (1974)).[6] If that statute does authorize local health officials to require everyone over the age of two to cover their faces, then petitioner asks this court to decide whether the Wisconsin legislature has unlawfully delegated its power to executive branch officials. While the petitioner challenges only Dane County's order, there are 71 other counties in this state, each of which would be bound by this court's decision and would benefit from the guidance a decision would supply.

It is inconceivable that four justices deem unworthy of their attention an allegation of unlawful action against the citizens of Wisconsin by an unelected government official, particularly when she and her counterparts across the state continue to exercise extraordinary powers over the

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[5] At the time of Petition of Heil, 230 Wis. 428, 445, 284 N.W. 42 (1939), Article VII, Section 3 of the Wisconsin Constitution read:

> The supreme court, except in cases otherwise provided in this constitution, shall have appellate jurisdiction only, which shall be coextensive with the state; but in no case removed to the supreme court shall a trial by jury be allowed. The supreme court shall have a general superintending control over all inferior courts; it shall have power to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari, and other original and remedial writs, and to hear and determine the same.

Article VII was significantly altered by a 1977 amendment. Currently, Article VII, Section 3(2) states, in relevant part: "The supreme court has appellate jurisdiction over all courts and may hear original actions and proceedings."

[6] See also Alabama Ass'n of Realtors v. Dep't of Health & Hum. Servs., No. 21A23, slip op. at 6 (U.S. Aug. 26, 2021) (per curiam) (citation omitted) (internal quotation omitted) ("We expect Congress to speak clearly when authorizing an agency to exercise powers of vast economic and political significance.").

people during the ongoing COVID-19 pandemic. Since the pandemic emerged 17 months ago, state and local officials have decreed multiple, life-altering orders over the people of Wisconsin, forbidding them from going to work or operating their businesses, closing schools, requiring them to cover their faces, and banning them from inviting their own families and friends into their homes. In successive cases, the court declared the DHS secretary exceeded her powers by first shutting down the state (albeit with several select exceptions) and later imposing capacity limits on public gatherings.[7] In another case, this court declared the Dane County public health officer exceeded her statutory authority and violated the fundamental constitutional rights of religious schools and the parents of children attending them when she closed schools to students in grades 3 through 12.[8] The people of Wisconsin established this court to protect their constitutional rights but when the court abdicates its sworn duty, the people have no mechanism by which to vindicate them, short of reclaiming the powers they bestowed upon their public servants.[9]

"No aspect of the judicial power is more fundamental than the judiciary's exclusive responsibility to exercise judgment in cases and controversies arising under the law." Gabler v. Crime Victims Rights Bd., 2017 WI 67, ¶37, 376 Wis. 2d 147, 897 N.W.2d 384. Rather than fulfill its fundamental function, a majority of this court instead "chooses to sit idly by"[10] in case after case—in this instance, in a time-sensitive case involving the liberty interests of the people and the scope of power government officials may exercise over them. The court's inaction deprives the people of Wisconsin of answers to questions of statutory and constitutional law that only the state's

[7] Wisconsin Legis. v. Palm, 2020 WI 42, 391 Wis. 2d 497, 942 N.W.2d 900; Tavern League of Wisconsin, Inc. v. Palm, 2021 WI 33, 396 Wis. 2d 434, 957 N.W.2d 261.

[8] James v. Heinrich, 2021 WI 58, ¶¶18, 32, 397 Wis. 2d 516, 960 N.W.2d 350.

[9] Cook v. Cook, 208 Wis. 2d 166, 189, 560 N.W.2d 246 (1997) (quoting State ex rel. La Crosse Tribune v. Circuit Court for La Crosse Cnty., 115 Wis. 2d 220, 229–30, 340 N.W.2d 460 (1983)) (noting this court has been "designated by the constitution and the legislature as a law-declaring court"); see also State ex rel. Wis. Senate v. Thompson, 144 Wis. 2d 429, 436, 424 N.W.2d 385 (1988) (citations omitted) ("[I]t is this court's function to develop and clarify the law."); State v. Hermann, 2015 WI 84, ¶154, 364 Wis. 2d 336, 867 N.W.2d 772 (Ziegler, J., concurring) ("Unlike a circuit court or the court of appeals, the supreme court serves a law-development purpose[.]").

[10] Evers, No. 2020AP1971-OA, at 8 (Rebecca Grassl Bradley, J. dissenting) (quoting United Student Aid Funds, Inc. v. Bible, 136 S. Ct. 1607, 1609 (2016) (Thomas, J., dissenting from the denial of certiorari)); Zignego, No. 2019AP2397, at 2 (Rebecca Grassl Bradley, J., dissenting) (quoting United Student Aid Funds, Inc., 136 S. Ct. at 1609 (Thomas, J., dissenting from the denial of certiorari)).

highest court may resolve with finality.[11] The same majority of justices who have repeatedly refused to decide cases of unquestionable statewide importance continue to neglect their duty, to the detriment of the people whom they were elected to serve.

While this court has recently declared the scope of local health officers' authority in other contexts, the masking issue presented in this case is a novel one and its resolution would provide guidance to local health officers statewide. Interpretation of the governing statute presents purely a question of law and it is likely to recur as the pandemic persists. Wisconsin Stat. § 252.03 cries out for clarification, particularly in light of the following broadly worded language on which local health officers continue to rely: "Local health officers may do what is reasonable and necessary for the prevention and suppression of disease." § 252.03(2). We have already determined, however, that "[t]he power to take measures 'reasonable and necessary' cannot be reasonably read as an open-ended grant of authority" and "[w]hat is reasonable and necessary cannot be reasonably read to encompass anything and everything." James, 397 Wis. 2d 516, ¶¶21–22.

The United States Supreme Court has interpreted similar statutory language in accord with this court's construction. Declaring unlawful the imposition of a nationwide moratorium on evictions of any tenants residing in areas with a substantial incidence of COVID-19, the Court rejected the argument advanced by the Director of the Centers for Disease Control and Prevention (CDC) that broad language in the Public Health Service Act authorized him or any other unelected executive branch official to take such sweeping action. Alabama Ass'n of Realtors v. Dep't of Health & Hum. Servs., No. 21A23, slip op. (U.S. Aug. 26, 2021) (per curiam). In § 361(a) of that Act (as amended) Congress authorized certain federal officials "to make and enforce such regulations as . . . are necessary to prevent the introduction, transmission, or spread of communicable diseases . . . . [And] [f]or purposes of carrying out and enforcing such regulations . . . may provide for such . . . other measures, as . . . may be necessary." In interpreting that language, the Court said "[i]t strains credulity to believe that this statute grants the CDC the sweeping authority that it asserts." Alabama Ass'n of Realtors, No. 21A23, at 1–2. Expressing concern that "the Government's read of §361(a) would give the CDC a breathtaking amount of authority," id. at 6, the Court noted the government failed to identify any limiting principle in its proffered interpretation:

> It is hard to see what measures this interpretation would place outside the CDC's reach, and the Government has identified no limit in §361(a) beyond the requirement that the CDC deem a measure "necessary." 42 U. S. C. §264(a); 42

[11] Skylar Reese Croy, As I See It: Examining the Supreme Court's Broad Original Jurisdiction, Wis. Law., July-Aug. 2021, at 31, 34, https://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=94&Issue=7&ArticleID=28514 (arguing "a speedy resolution, and one with clarity and finality" is often "in the public's best interest" with respect to cases involving COVID-19-related legal issues); see also Heil, 230 Wis. at 445–46 (indicating this court will grant a petition for leave to commence original action if "the circumstances . . . call for a speedy and authoritative determination" of the legal issue or issues it presents).

> CFR §70.2. Could the CDC, for example, mandate free grocery delivery to the homes of the sick or vulnerable? Require manufacturers to provide free computers to enable people to work from home? Order telecommunications companies to provide free high-speed Internet service to facilitate remote work?

Id. at 6–7. Notwithstanding these interpretations of similar statutory language pronounced by both the state's and nation's highest courts, the majority's inaction in this case may nevertheless be interpreted by local health officers as a license to take whatever measures they deem "reasonable and necessary," in light of the majority's reticence to check their exercise of power. Allowing unelected executive branch officials to act in accordance with their will, without any judicial scrutiny of the lawfulness of their commands, is simply incompatible with constitutional governance. As the Court explained:

> [While] the public has a strong interest in combating the spread of the COVID–19 Delta variant . . . . our system does not permit agencies to act unlawfully even in pursuit of desirable ends. Cf. Youngstown Sheet & Tube Co. v. Sawyer, 343 U. S. 579, 582, 585–586 (1952) (concluding that even the Government's belief that its action "was necessary to avert a national catastrophe" could not overcome a lack of congressional authorization). It is up to Congress, not the CDC, to decide whether the public interest merits further action here.

Id. at 8. At the expense of freedom, a majority of this court abandons its constitutional duty to preserve the policy-making prerogatives of the people's representatives in the legislature.

The court's failure to act in this case deprives the entire state of any timely resolution of the important issues presented. The local health officer's edict challenged in this case expires September 16, 2021. Should the petitioner choose to file his case in circuit court, it will likely become moot unless the local health officer extends her order. In the meantime, everyone subject to this order will have no recourse should this court ultimately determine it was unlawful. "When justice is not forthcoming, when it is deferred too long, the result may be extreme injustice." Strachan v. Colon, 941 F.2d 128, 129 (2d Cir. 1991) ("For that reason the 40th clause of Magna Carta provided that justice be to none denied or delayed. 1 W.S. Holdsworth, A History of English Law, 57-58 (3rd ed. 1922). This ancient tenet of the law has been capsulized in the expression 'justice delayed is justice denied.'"). Nearly a century ago, this court emphasized we should "use all reasonable and lawful means to see that [our work] is done as expeditiously as circumstances will permit." See In re Snyder, 184 Wis. 10, 12, 198 N.W. 616 (1924). This court recognized "an insistent and well-founded demand by the public for a speedy and effective administration of justice, and it has been the constant effort of this court to meet such demand . . . because it is inherently reasonable and just." Id. at 13.

The citizens of this state quite reasonably expect this court to fulfill its responsibility to timely decide important cases. In this case, the people deserve to know whether the authority wielded over them by their public servants is being lawfully exercised or not. Four justices continue to disregard their duty to the people who elected them. A case alleging unlawful

infringement of the people's liberty should convince this court to act. Its failure to do so in this case denies justice. I dissent.

I am authorized to state that Chief Justice ANNETTE KINGSLAND ZIEGLER joins this dissent.

Sheila T. Reiff
Clerk of Supreme Court